Process Edward

# FOC MAIL SECTION

## Federal Communications Commission

DA 96-1991

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Dispareder en	Before the ederal Communications Commission Washington, D.C. 20554	
In the Matter of	) ) )	
Amendment of Section 73.20	)2(b), MM Docket No. 96-240	
Table of Allotments,	) RM-8946	
FM Broadcast Stations.	)	
(Lockport, New York)	)	

## NOTICE OF PROPOSED RULE MAKING

Adopted: November 29, 1996 Released: December 6, 1996

Comment Date: January 27, 1997

Reply Comment Date: February 11, 1996

By the Chief. Allocations Branch:

1. The Commission has before it the petition for rule making filed by Culver Communications Corp. ("petitioner") requesting the allotment of Channel 221A to Lockport, New York, as the community's first local FM service. Petitioner states that it will apply for the channel, if allotted.<sup>1</sup>

#### Technical Summary

2. Channel 221A can be allotted to Lockport in compliance with the Commission's minimum distance separation requirements, with request to domestic allotments, without the imposition of a site restriction.<sup>2</sup> However, Lockport is located within 320 kilometers (200 miles) of the U.S.-Canadian border, and the allotment would result in short-spacings to Station CKPC-FM, Channel 221C1, Brantford, Ontario, Channels 219C1, St. Catherine, Ontario, 220B, Peterboro, Ontario, 222B, Oshawa, Ontario, and 223B, Toronto, Ontario, Canada. Petitioner

¹ Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.420(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3919, n. 41 (1990). The petitioner is requested to rectify this omission in its comments.

<sup>&</sup>lt;sup>2</sup> The coordinates for Channel 221A at Lockport are 43-10-12 North Latitude and 78-41-54 West Longitude.

states that appropriate protection of all of the above channels, with the exception of Station CKPC-FM, can be accomplished with the proposed Lockport station operating nondirectionally with 6 kilowatts of power at 100 meters above average terrain. With regard to the short-spacing to Station CKPC-FM, petitioner states that it will directionalize its signal to avoid any prohibited interference. Therefore, we will request concurrence by the Canadian Government in the allotment of Channel 221A to Lockport as a specially negotiated allotment.

3. We believe petitioner's proposal warrants consideration since the allotment of Channel 221A to Lockport could provide the community with its first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	<u>Channel No.</u>	
City	Present	Proposed
Lockport, New York		221A

- 4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.
- 5. Interested parties may file comments on or before January 27, 1997, and reply comments on or before February 11, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard C. Greene, President Culver Communications Corporation P.O. Box 477 Lockport, New York 14095 (Petitioner)

- 6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.
- 7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no <u>ex parte</u> presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been

decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An <u>ex parte</u> presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an <u>ex parte</u> presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an <u>ex parte</u> presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos Chief, Allocations Branch Policy and Rules Division Mass Media Bureau

Attachment: Appendix

#### **APPENDIX**

- 1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.
- 2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.
- 3. <u>Cut-off protection</u>. The following procedures will govern the consideration of filings in this proceeding.
- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).
- (b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
- (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.
- 4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission,

Washington, D.C. 20554.

- 5. <u>Number of Copies</u>. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.
- 6. <u>Public Inspection of Filings</u>. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.